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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 SECURITIES AND EXCHANGE
11 COMMISSION,

Plaintiff,

12 v.

13 LOUIS V. SCHOOLER and FIRST
14 FINANCIAL PLANNING
15 CORPORATION, dba Western Financial
Planning Corporation,

Defendants.

Case No.: 3:12-cv-2164-GPC-JMA

**(1) GRANTING RECEIVER’S
TWENTIETH INTERIM FEE
APPLICATION;**

[ECF No. 1521]

**(2) GRANTING ALLEN MATKINS’
TWENTIETH INTERIM FEE
APPLICATION;**

[ECF No. 1522]

**(3) GRANTING DUFFY,
KRUSPODIN & COMPANY’S
SEVENTH INTERIM FEE
APPLICATION;**

[ECF No. 1523]

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24 Before the Court are three fee applications by the court-appointed receiver Thomas
25 C. Hebrank (the “Receiver”) (ECF No. 1521); counsel to receiver Allen Matkins Leck
26 Gamble Mallory & Natsis LLP (“Allen Matkins”) (ECF No. 1522); and tax accountants
27 for receiver Duffy, Kruspodin & Company, LLP (“Duffy Kruspodin”) (ECF No. 1523).
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1 Plaintiff Securities and Exchange Commission (the “SEC”) filed a non-opposition
2 to all three motions on October 13, 2017. ECF No. 1533. The Court finds these motions
3 suitable for disposition without oral argument pursuant to Civil Local Rule 7.1 (d)(1).

4 **BACKGROUND**

5 **A. Receiver**

6 In the Twentieth Interim Fee Application, the Receiver asserts that he incurred
7 \$96,363.00 in fees and \$1,288.85 in costs for the application period covering April 1,
8 2017, through June 30, 2017 (“Twentieth Application Period”). ECF No. 1521 at 1. The
9 breakdown of the fees amassed is as follows:

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Category	Total
General Receivership	\$4,331.25
Asset Investigation & Recovery	\$0.00
Reporting	\$1,777.50
Operations & Asset Sales	\$67,878.00
Claims & Distributions	\$22,376.25
Legal Matters & Pending Litigation	\$0.00
Total	\$96,363.00

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21 *Id.* at 2–4. Receiver now seeks payment of 80% of fees incurred, amounting to
22 \$77,090.40, and 100% of the costs, which account for postage, website maintenance, and
23 copies. *Id.* at 1 & Exhibit C.

24 **B. Allen Matkins**

25 In the Twentieth Interim Fee Application, Allen Matkins, counsel for receiver,
26 asserts that it incurred \$82,392.30 in fees and \$570.56 in costs for the application period
27 covering April 1, 2017, through June 30, 2017. ECF No. 1522 at 1. The breakdown of
28 the fees amassed is as follows:

Category	Total
General Receivership	\$11,811.60
Reporting	\$1,759.50
Operations & Asset Sales	\$60,437.70
Claims & Distributions	\$6,572.25
Third Party Recoveries	\$258.75
Employment/Fees	\$1,552.50
Total	\$82,392.30

Id. at 1–8. Allen Matkins now seeks payment of 80% of the fees incurred, amounting to \$65,913.84, and 100% of the costs, accounting for document searches, filing fees, and service of process. *Id.* at 1 & Exhibit A.

C. Duffy Kruspodin

In the Sixth Interim Fee Application, Duffy Kruspodin, tax accountants for Receiver, asserts that it incurred \$180,528.75 in fees and \$13,597.08 in costs for work in preparing the 2016 federal and state tax returns for the General Partnerships (“GPs”). ECF No. 1523 at 1. The breakdown of the fees amassed is as follows:

Category	Total
General Engagement Services	\$41,364.00
IT Consulting	\$4,348.80
Preparation of 2016 Informational Returns and 2016 Income Tax Returns for GPs	\$126,394.20
Preparation of 2015 Income Tax Returns for First Financial, Real Asset Locators, and related entities	\$8,421.75

Total	\$180,528.75
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Id. at 1–7. Duffy Kruspodin now seeks payment for all fees and costs incurred in carrying out these tasks. *Id.* at 2. The costs are itemized in Exhibit D of the application and account for tax software, electronic filing, envelopes, and postage. *Id.* at 8 & Ex. D.

LEGAL STANDARD

“[I]f a receiver reasonably and diligently discharges his duties, he is entitled to fair compensation for his efforts.” *Sec. & Exch. Comm’n v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992). “The court appointing [a] receiver has full power to fix the compensation of such receiver and the compensation of the receiver’s attorney or attorneys.” *Drilling & Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). A receiver’s fees must be reasonable. *See In re San Vicente Med. Partners Ltd.*, 962 F.2d 1402, 1409 (9th Cir. 1992).

As set forth in the Court’s prior fee orders, *see, e.g.*, ECF No. 1167, the Court will assess the reasonableness of the requested fees using the factors enumerated in *Sec. & Exch. Comm’n v. Fifth Avenue Coach Lines*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973) and *In re Alpha Telcom, Inc.*, 2006 WL 3085616, at *2–3 (D. Or. Oct. 27, 2006). Those factors include: (1) the complexity of the receiver’s tasks; (2) the fair value of the receiver’s time, labor, and skill measured by conservative business standards; (3) the quality of the work performed, including the results obtained and the benefit to the receivership estate; (4) the burden the receivership estate may safely be able to bear; and (5) the Commission’s opposition or acquiescence. *See* 364 F. Supp. at 1222; 2006 WL 3085616, at *2–3.

DISCUSSION

Interim Fee Applications

A. Complexity of Tasks

1. Receiver

1 The Court finds that the tasks performed by the Receiver during the Twentieth
2 Application Period was moderately complex. The Receiver undertook the following
3 tasks during the relevant period:

- 4 - handling general administrative issues, including reviewing mail, email, and
- 5 other correspondence directed at the Receivership Entities;
- 6 - administering the bank accounts of the Receivership Entities;
- 7 - reviewing and approving expenditures;
- 8 - maintaining and updating the Receiver's website with case information and
- 9 documents;
- 10 - responding to investor inquiries and misinformation put out by certain
- 11 investors;
- 12 - preparing Receiver's Nineteenth interim report;
- 13 - preparing the filings regarding the sale of the Reno Partners, Valley Vista,
- 14 Bratton View, and Santa Fe properties;
- 15 - managing and overseeing the GPs' operations and real properties;
- 16 - managing and overseeing Western's operations;
- 17 - performing accounting functions of the Receivership Entities;
- 18 - managing and overseeing tax reporting for Receivership Entities;
- 19 - managing and overseeing GP operational bills, loan payments, and cash
- 20 management;
- 21 - obtaining listing agreements and marketing properties for sale with brokers;
- 22 - analyzing, negotiating, and accepting purchase offers;
- 23 - conducting investor votes;
- 24 - closing property sales;
- 25 - sending monthly case update reports to investors, listing major legal filings,
- 26 property sales activity, court rulings, tax, and other information; and
- 27 - preparing "cash in vs. cash out" analysis to determine each investor's proposed
- 28 allowed claim amount, which included reviewing historical files and
- employment records.

ECF No. 1521 at 2–4.

2. Allen Matkins

24 The Court finds that the tasks performed by Allen Matkins, counsel for Receiver,
25 during the Twentieth Application Period were somewhat complex. Counsel undertook
26 the following tasks during this period:

- 27 - advising the Receiver regarding the formation of a Qualified Settlement Fund
- 28 under the Internal Revenue Code;

- assisting and advising the Receiver in responding to a request by Louis Schooler's former counsel relating to a sale of real property;
- assisting and advising the Receiver in the remand of this case from the Ninth Circuit to determine whether Mr. Schooler is deceased and if a representative of his estate should be permitted to prosecute the appeal;
- assisting and advising the Receiver regarding a request for documents from an investor in WFP Securities;
- preparing the Receiver's Nineteenth Interim Report;
- assisting the Receiver with respect to operations of Western and the General Partnerships, including easement and condemnation issues, issues relating to property taxes and assessments, and the sales of the Reno Partners, Valley Vista, Bratton View, LV Kade, RenoVista/Reno View, and Santa Fe properties;
- assisting and advising the Receiver on issues relating to investor claims and procedures for the administration of such claims, which included reviewing and responding to communications from investors, creditors, and counsel;
- assisting the Receiver in preparing notices to investors and updates to the receivership website;
- collecting the outstanding judgment against LinMar III, which included reviewing the post-judgment receiver's reports and advising on issues relating to the post-judgment receivership; and
- assisting the Receiver in preparing his Eighteenth and Nineteenth Interim Fee Applications, and Duffy Kruspodin & Co. in preparing its Seventh Interim Fee Application.

ECF No. 1522 at 2–8.

3. Duffy Kruspodin

The Court finds that the tasks performed by Duffy Kruspodin, tax accountants for Receiver, during the Seventh Application Period were moderately complex. Tax Accountants to Receiver undertook the following tasks during this period:

- engaging in communication and meetings with the Receiver with respect to the receivership;
- updating the accounting documents necessary to prepare the tax returns;
- working with the Receiver to evaluate all balance sheet accounts and retaining those that remain to be paid out as of the close of the entities;
- preparing short year tax returns for the 2016 tax return;
- providing services related to information technology to assist with the tax preparation process; and

- 1 - preparing the 2016 informational returns for the GPs, 2016 income tax returns
2 for the GPs, and 2015 income tax returns for Western and its subsidiaries,
3 including First Financial and Real Asset Locators.

4 ECF No. 1523 at 2–7.

5 **B. Fair Value of Time, Labor, and Skill**

6 The Receiver billed his time at \$247.50 per hour and the time of those working for
7 him at \$180.00 per hour during both application periods. ECF No. 1521 at 2–4. Allen
8 Matkins billed its time at \$283.50 – \$715.50 per hour, with the majority of work being
9 billed at \$517.50 per hour. ECF No. 1522, Exhibit A. Duffy Kruspodin billed its time
10 from \$70 – \$400 per hour, with a blended billing rate of \$169.65. ECF No. 1523 at 9–10.
11 These rates reflect a ten percent discount from the Receiver’s, Allen Matkins’, and Duffy
12 Kruspodin’s ordinary rates. ECF No. 1521 at 1; ECF No. 1522 at 1; ECF No. 1523 at 1.

13 The Court continues to find, as it has in previous fee orders, that the rates charged
14 by the Receiver, Allen Matkins, and Duffy Kruspodin are comparable to rates charged in
15 this geographic area and therefore represent a fair value of the time, labor, and skill
16 provided.

17 **C. Quality of Work Performed**

18 The Court finds that the quality of work performed by the Receiver, Allen Matkins,
19 and Duffy Kruspodin to be above average. The Receiver has, and continues to,
20 competently operate the Receivership as evidenced by Receiver’s Nineteenth Status
21 Report (ECF No. 1478), while at the same time marshalling assets—through capital calls,
22 post-judgment collection, and sales—to support its continued financial integrity. These
23 actions benefit all investors. The Receiver and his counsel have, moreover, complied
24 with the Court’s orders and have made every effort to protect investors’ interests in the
25 GP properties during the pendency of this litigation. The Court likewise finds the quality
26 of Duffy Kruspodin’s work to be satisfactory. Duffy Kruspodin prepared all 98 of the GP
27 tax returns for 2016 in a timely manner, fulfilling the Receivership’s responsibility to the
28 federal and state governments and to investors. ECF No. 1523 at 10.

1 **D. Receivership Estate's Ability to Bear Burden of Fees**

2 On August 30, 2016, the Court approved the Receiver's Modified Orderly Sale
3 Process, ECF No. 1359, and the use of the One Pot approach to distribute receivership
4 assets, ECF No. 1304 at 31. These actions were taken for the dual purpose of increasing
5 the value of the receivership estate by selling GP properties and lowering administrative
6 costs. ECF No. 1304 at 30.

7 Since the Court approved the Receiver's last interim fee application, the Court has
8 approved the sales of the LV Kade, Silver Springs North, Park Vegas, Washoe V, and
9 Production Partners Properties. ECF Nos. 1511, 1520, 1536, 1537, 1538. A pending
10 motion for approval of sale of the Silver State Properties is pending and awaiting
11 confirmation that not qualified overbids have been submitted. ECF No. 1527.

12 The sales and future sale of these properties have maximized, and will continue to
13 maximize, the value of the GP properties for the benefit of all investors. Such sales will
14 also increase the Receivership's cash balance. Accordingly, the Court finds that the
15 Receivership estate has sufficient ability to bear the instant fee requests.

16 **E. Commission's Opposition or Acquiescence**

17 On October 13, 2017, the Securities and Exchange Commission filed a notice that
18 it supported approval of these interim fee applications because they "appear reasonable in
19 light of the work performed during this interim period." ECF No. 1533.

20 **Interim Reports**

21 On August 9, 2017, the Receiver filed the Twentieth Interim Report. ECF No.
22 1505. The Report provides updates concerning: (1) the Receiver's activities; (2)
23 Western's assets; (3) issues concerning the GP properties; (4) closed and pending sales of
24 GP properties; and (5) pending offers and negotiations. The Court is satisfied with the
25 level of detail contained in the Twentieth Interim Report and with the reasonableness of
26 the actions taken by the Receiver during the relevant time periods.

CONCLUSION

Considering the above five factors taken together, and considering that “[i]nterim fees are generally allowed at less than the full amount,” *Alpha Telecom*, 2006 WL 3085616, at *2–3, the Court awards fees and costs as set forth in the following table:

Applicant	Fees Allowed	% of Fees Incurred¹	Costs Allowed	% of Costs Requested
Receiver	\$77,090.40	80	\$1,288.85	100
Allen Matkins	\$65,913.84	80	\$570.56	100
Duffy Kruspodin	\$180,528.75	100	\$13,597.08	100

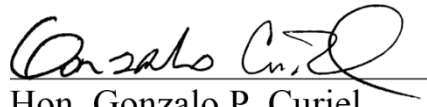
ORDER

After a review of the parties’ submissions, the record in this matter, and the applicable law, and for the foregoing reasons, **IT IS HEREBY ORDERED** that:

1. The Receiver’s Twentieth Interim Fee Application, ECF No. 1521, is **GRANTED**;
2. Allen Matkins’ Twentieth Interim Fee Application, ECF No. 1522, is **GRANTED**;
3. Duffy Kruspodin’s Seventh Interim Fee Application, ECF No. 1523, is **GRANTED**;
4. The Receiver’s Twentieth Interim Report, ECF No. 1505, is **APPROVED**.

IT IS SO ORDERED.

Dated: November 7, 2017


Hon. Gonzalo P. Curiel
United States District Judge

¹ The Court includes the percentage of fees *incurred* rather than a percentage of the fees requested, given that the Receiver and Allen Matkins request only a percentage of their actual fees. In addition, Duffy Kruspodin’s billing rate already incorporated a discount of 10%. ECF No. 1523 at 1.